

# SEWARD & KISSEL LLP

ONE BATTERY PARK PLAZA  
NEW YORK, NEW YORK 10004

M. WILLIAM MUNNO  
PARTNER  
(212) 574-1587  
munno@sewkis.com

TELEPHONE: (212) 574-1200  
FACSIMILE: (212) 480-8421  
WWW.SEWKIS.COM

901 K STREET, NW  
WASHINGTON, DC 20001  
TELEPHONE: (202) 737-8833  
FACSIMILE: (202) 737-5184

December 8, 2014

**Motion and Cross-Motion Hearing Date and Time: December 10, 2014 at 10:00 a.m. (EST)**

## VIA HAND DELIVERY

Hon. Shelley C. Chapman  
United States Bankruptcy Court  
Southern District of New York  
1 Bowling Green  
New York, New York 10004

Re: In re Lehman Brothers Holdings Inc., et al.,  
Chapter 11 Case No. 08-13555(SCC)

Dear Judge Chapman:

The RMBS Trustees' counsel just received an unexpected letter from Lehman's counsel dated December 8, 2014 (the "Lehman Letter"). We do not believe these are any issues to be resolved by the Court. Messrs. Aronoff and Sauerwein are available for deposition at the times Lehman requested, and we so advised Lehman and plan to proceed with these depositions on Tuesday. Mr. Top is not testifying at the hearing.

Some context may help the Court. In August, the RMBS Trustees moved for Estimation. In October, Lehman Cross-Moved but did not submit any declaration regarding it proposed Protocol. In November, the RMBS Trustees submitted Mr. Parekh's Declaration to explain the estimated time and expense of the proposed Protocol. Mr. Parekh was deposed by Lehman on Friday, December 4, regarding his November Declaration. Mr. Parekh's November

Declaration, however, could not comment on the December 3 Declarations of Messrs. Pino and Alread submitted by Lehman.

On Friday, December 5, the parties exchanged draft proposed joint letters to the Court and were working on them over the weekend. We noted that the RMBS Trustees anticipated one or two rebuttal witnesses to help educate the Court regarding statements made by Messrs. Pino and Alread concerning the estimated time and expense of the proposed Protocol. We advised Lehman that Mr. Aronoff and/or Mr. Sauerwein who have been in the industry for more than 30 years each, would be the rebuttal witnesses.

We advised Lehman yesterday afternoon that the RMBS Trustees do *not* intend to call Mr. Top, U.S. Bank's attorney who submitted a declaration regarding the work and efforts of the RMBS Trustees to resolve the RMBS Claims during the past three years.

There is no basis for Lehman's request that Messrs. Aronoff and Sauerwein not be permitted to testify at the December 10 hearing. Bankruptcy Rule 9014(c) expressly provides that Federal Rule 26(a)(2) does *not* apply in contested matters, such as this one. Lehman is not entitled to written rebuttal opinions (nor had they requested them).<sup>1</sup> However, there has never been a dispute about having Lehman depose Messrs. Aronoff and Sauerwein to learn their views about the proposed Protocol and the statements Messrs. Pino and Alread made in their Declarations about it.

---

<sup>1</sup> Attached as Exhibit 1 is the email string between the parties' counsel from Friday, December 4 to December 8, regarding the draft proposed joint letter and the draft joint letter sent today. With all the important work the parties and the Court have to do in preparing for the December 10 hearing, the RMBS Trustees are not addressing assertions in the Lehman Letter which they maintain are more than inaccurate.

Hon. Shelley C. Chapman  
December 8, 2014  
Page 3

Respectfully submitted,

A handwritten signature in black ink that reads "M. William Munno". The signature is written in a cursive, flowing style.

M. William Munno

caw

cc Todd G. Cosenza, Esq.  
Paul V. Shalhoub, Esq.  
Michael Rollin, Esq.  
Franklin H. Top III, Esq.  
John C. Weitnauer, Esq.  
Richard C. Pedone, Esq.  
Grant T. Stein, Esq.  
By Email

SK 16271 0159 6277238

December 8, 2014

**Motion and Cross-Motion Hearing Date and Time: December 10, 2014 at 10:00 a.m. (EST)**

**VIA HAND DELIVERY**

Hon. Shelley C. Chapman  
United States Bankruptcy Court  
Southern District of New York  
1 Bowling Green  
New York, New York 10004

Re: In re Lehman Brothers Holdings Inc., et al.,  
Chapter 11 Case No. 08-13555(SCC)

Dear Judge Chapman:

As requested by the Court, the parties submit this joint letter to apprise the Court of the estimated time needed for the hearing on Wednesday, December 10, as well as the witnesses who currently are anticipated to testify.

The parties understand, and wish to confirm with the Court, that the issue that will be presented to the Court is limited to Estimation/Protocol. The parties do not intend to present argument or evidence about the statistical sampling or the estimated amount of the RMBS Claims. Nor do the parties intend to present argument or evidence concerning the "Reserve Motion." If this is not consistent with the Court's understanding, we would request an immediate conference call.

- Brief Opening Statements (*approximately 15 minutes for each side*)
- Witness Testimony (*approximately 4 to 5 ½ hours*)

For RMBS Trustees

- Charles A. Parekh; James Aronoff and/or Richard T. Sauerwein

For Lehman

- William Alread and Craig Pino

- Closing Legal Arguments (*approximately 20-30 minutes for each side if Court wants closing argument*)

The witnesses and amount of time set forth above reflect the parties' current best estimates. Should the Court have any questions or different expectations, the parties would welcome the Court's guidance at its earliest convenience. Lehman's counsel joins in this letter.

Thank you.

Respectfully submitted,

M. William Munno

caw

cc Todd G. Cosenza, Esq.  
Paul V. Shalhoub, Esq.  
Michael Rollin, Esq.  
Franklin H. Top III, Esq.  
John C. Weitnauer, Esq.  
Richard C. Pedone, Esq.  
Grant T. Stein, Esq.  
By Email

## Witkowski, Cheryl

---

**From:** Munno, M. William  
**Sent:** Monday, December 08, 2014 9:39 AM  
**To:** Cosenza, Todd; Shalhoub, Paul; 'Hagglund, Cristina I. Miller-Ojeda'; mrollin@joneskeller.com; mbraswell@joneskeller.com; 'rnetzer@willkie.com'  
**Cc:** Munno, M. William; Guzman, Daniel; kit.weitnauer@alston.com; 'top@chapman.com'; 'rpedone@nixonpeabody.com'; 'Scott Lewis'  
**Subject:** RE: RMBS Trustees - Lehman -- Draft letter to Judge Chapman

Todd:

I am just seeing your email this morning which arrived on my blackberry at 2:27 a.m.

Most of our systems are back up after the electrical power shutdown in the building for a Con Edison test.

We agree that Frank Top's testimony is unnecessary. I thought I indicated as much in my email to you yesterday afternoon. Nor did we ever suggest that Mr. Top would testify about the governing agreements.

His Declaration addresses the steps that RMBS Trustees have taken during the past three years regarding the RMBS Claims because Lehman asserted that the RMBS Trustees had done nothing. In any event, I think we can agree that Frank Top's testimony at the hearing is not at issue.

Regarding Mr. Aronoff and Mr. Sauerwein, the RMBS Trustees suggestion is that one or both of them testify as rebuttal because the RMBS Trustees had had no opportunity to address the Declarations of Messrs. Pino and Alread that Lehman submitted Wednesday night.

You have Mr. Aronoff's August Declaration with the details of his expert disclosures. I will get Mr. Sauerwein's resume. I understand he has not previously been deposed or testified in any proceedings, but is a long-time longtime industry executive.

That said, the RMBS Trustees still maintain that "experts" should not be needed to educate the Court about the time and expense of the proposed Lehman Protocol.

As I noted yesterday in my email, I will call you after I have circled up with the other Trustee counsel to make sure what I am saying is agreed by all Trustee counsel.

Thank you.

Bill Munno

----- Original Message -----

From: Cosenza, Todd <TCosenza@willkie.com>

To: Munno, M. William; Daniel Guzman <danieleguzman@gmail.com>; Kit Weitnauer <Kit.Weitnauer@alston.com>; Franklin Top III <top@chapman.com>; rpedone@nixonpeabody.com Pedone <rpedone@nixonpeabody.com>; Scott Lewis <slewis@chapman.com>; Guzman, Daniel  
Cc: Shalhoub, Paul <pshalhoub@willkie.com>; Hagglund, Cristina I. Miller-Ojeda <CHagglund@willkie.com>; mrollin@joneskeller.com <mrollin@joneskeller.com>; mbraswell@joneskeller.com <mbraswell@joneskeller.com>; Netzer, Roger <rnetzer@willkie.com>  
Sent: Sun Dec 07 19:57:38 2014  
Subject: RE: RMBS Trustees - Lehman -- Draft letter to Judge Chapman

Bill (and others),

As to Mr. Top, even though he is U.S. Bank's attorney, you have today identified him as a fact witness for the hearing on Wednesday.

We note that over three weeks ago, Lehman asked to take the deposition of Mr. Pillar (of U.S. Bank) on some of the very same facts issues that Mr. Top (U.S. Bank's attorney) will apparently seek to testify at the hearing. The trustees argued that the question of "whether there must be a full loan-by-loan review . . . is a legal issue for [the] Court to decide," and that "Mr. Pillar has no relevant testimony on this legal issue." (RMBS Trustees' November 21, 2014 Letter to the Court.) This argument was made despite Lehman's assertion that Mr. Pillar's testimony would be critical to "whether the Court should approve Lehman's proposed protocol or permit the Trustees' claims to be estimated." (Lehman's November 20, 2014 Letter to the Court.). The Court ultimately agreed with your position and indicated there was no need for testimony from fact witnesses at the hearing.

To now present Mr. Top as a potential fact witness testifying on some of these very same matters, on behalf of U.S. Bank and the other trustees, is improper. He should not be permitted to testify at the hearing.

Moreover, if Mr. Top were to seek to testify, his potential testimony also presents ethical issues. See New York Rule of Professional Conduct 3.7(a).

With regard to the rebuttal witnesses Mr. Aronoff and Mr. Sauerwine, they are last minute additions as expert witnesses for the hearing on Wednesday. They also have not comported with the rules for expert disclosure and should be struck.

We reserve all rights to raise these issues with the Court tomorrow.

Regards,  
Todd

-----Original Message-----

From: Munno, M. William [mailto:munno@sewkis.com]  
Sent: Sunday, December 07, 2014 3:59 PM  
To: Cosenza, Todd; Daniel Guzman  
Cc: Shalhoub, Paul; Hagglund, Cristina I. Miller-Ojeda; mrollin@joneskeller.com; mbraswell@joneskeller.com; Kit Weitnauer; Franklin Top III; rpedone@nixonpeabody.com Pedone; Scott Lewis; Guzman, Daniel; Netzer, Roger  
Subject: RE: RMBS Trustees - Lehman -- Draft letter to Judge Chapman

Todd, I have to consult with others. I am not in my office; we now have a work around to get email. I'm not sure you will receive this email, however

But in response, NO.

First by not presenting declarations when cross moving, but instead waiting until after the Trustees responded, Lehman created this problem.

Aronoff and Sauerwein are the only potential rebuttal witnesses given the Pino and Alread declarations Lehman served Wednesday night.

Yes, tomorrow I will endeavor to have them available on Tuesday for deposition.

Frank Top is not a proposed rebuttal witness. Lehman has had his declaration.

You have been informed that he is taking Pino's and Alread's deposition.

He cannot be available at the times you propose.

And is his deposition really necessary? Is it really germane to estimation/Protocol.

We do NOT plan to have Frank take the stand, unless Lehman thinks there is an issue that needs to be addressed or if somehow the Court wanted to hear from him. That is why the draft letter says next to his name "tentative."

I am going to see my 10 year old granddaughter in the Nutcracker in Connecticut now.

I am out of pocket until early tomorrow. I suggest we speak then.

Meanwhile I will try to get the benefit of other Trustee counsel's views.

Thank you.

Bill Munno

M. William Munno  
Seward & Kissel LLP  
One Battery Park Plaza  
New York, New York 10004  
212 574 1587

---

From: Cosenza, Todd [TCosenza@willkie.com]

Sent: Sunday, December 07, 2014 3:31 PM

To: Daniel Guzman

Cc: Shalhoub, Paul; Hagglund, Cristina I. Miller-Ojeda; mrollin@joneskeller.com;  
mbraswell@joneskeller.com; Munno, M. William; Kit Weitnauer; Franklin Top III;  
rpedone@nixonpeabody.com Pedone; Scott Lewis; Guzman, Daniel; Netzer, Roger



Subject: Re: RMBS Trustees - Lehman -- Draft letter to Judge Chapman

Bill,

We will take the depositions of the three rebuttal witnesses you identified in your email below on Tuesday December 9th.<x-apple-data-detectors://1> Please make Mr. Top and Mr. Aronoff available on Tuesday, December 9th at 10am<x-apple-data-detectors://2> and Mr. Sauerwine available on Tuesday, December 9th at 2:30pm<x-apple-data-detectors://3>. If these rebuttal witnesses are not made available, Lehman will seek proper relief from the Court. We will send formal notices later today.

Regarding your proposed motion to strike portions of Mr. Alread's declaration, we will provide our response once we have had an opportunity to review your substantive papers.

In light of this new development concerning your rebuttal witnesses, we are not in a position to comment on (much less to sign onto) the joint letter or the order for the hearing. Lehman will be able to provide comments once we have clarity with regard to the above rebuttal witnesses being made available for deposition.

Regards,  
Todd

On Dec 7, 2014, at 1:36 PM, Daniel Guzman  
<danieleguzman@gmail.com<mailto:danieleguzman@gmail.com>> wrote:

All,

Please see below.

Dan Guzman

Begin forwarded message:

From: Daniel Guzmán <danieleguzman@gmail.com<mailto:danieleguzman@gmail.com>>  
Date: December 7, 2014 at 12:40:40 PM EST  
To: TCosenza@willkie.com<mailto:TCosenza@willkie.com>  
Cc: munno@sewkis.com<mailto:munno@sewkis.com>, top@chapman.com<mailto:top@chapman.com>, kit.weitnauer@alston.com<mailto:kit.weitnauer@alston.com>, rpedone@nixonpeabody.com<mailto:rpedone@nixonpeabody.com>, slewis@chapman.com<mailto:slewis@chapman.com>, guzman@sewkis.com<mailto:guzman@sewkis.com>  
Subject: Re: RMBS Trustees - Lehman -- Draft letter to Judge Chapman

\*\*Email from Bill Munno\*\*

Todd,

I attach a revised draft of the Joint Letter.

Please note that we would propose to have Frank Top testify to the matters in his Declaration, but I would hope that Lehman would stipulate to the statements in his Declaration. If not, I think his testimony would be short.

As we have moved for estimation, Charlie Parekh would go first, not third. His August Declaration addresses the delay of a loan-by-loan review.

We would propose to have Jim Aronoff and/or Rich Sauerwein, also of Duff & Phelps, as rebuttal witnesses who would follow Pino and Alread.

While there has been very little time to study the Pino and Alread Declarations, we do think Alread's Declaration opines on legal matters. The RMBS Trustees intend to move to strike it. We wanted to give you the courtesy of a heads up in that regard.

We also think that Lehman's Reply includes Sur-Reply points addressed to Estimation and that Lehman already had opposed Estimation in its initial papers. The RMBS Trustees intend to file a supplemental brief addressed to the specific matters regarding Estimation in Lehman's reply papers so the court has the benefit of an analysis of the legal authorities from both parties' perspective.

Please let me know if the revised draft is agreeable.

Thank you,

Bill Munno

P.S. Our building has no electrical power this weekend.

<2014.12.07 Joint letter to Judge Chapman re December 10 Hearing-v2.docx>

On Dec 7, 2014, at 12:35 PM, Guzman, Daniel

<guzmand@sewkis.com<mailto:guzmand@sewkis.com>> wrote:

---

From: Cosenza, Todd [TCosenza@willkie.com<mailto:TCosenza@willkie.com>]

Sent: Friday, December 05, 2014 4:47 PM

To: Munno, M. William; Shalhoub, Paul

Cc: top@chapman.com<mailto:top@chapman.com>;

kit.weitnauer@alston.com<mailto:kit.weitnauer@alston.com>;

rpedone@nixonpeabody.com<mailto:rpedone@nixonpeabody.com>; Guzman, Daniel

Subject: RE: RMBS Trustees - Lehman -- Draft letter to Judge Chapman

Bill:

Attached is our markup of the joint letter to the Court. Our understanding was that Judge Chapman wanted a bit more detail on the anticipated structure and timing of the hearing (including the expected witnesses), so we have included it in our revisions.

We were confused about your initial reference to unnamed potential "rebuttal witnesses" concerning the Protocol. If the RMBS Trustees are planning on calling anyone other than Dr. Parekh, Lehman is entitled to the names of those individuals now.

Todd

From: Munno, M. William [mailto:munno@sewkis.com]  
Sent: Friday, December 05, 2014 1:11 PM  
To: Cosenza, Todd; Shalhoub, Paul  
Cc: top@chapman.com<mailto:top@chapman.com>;  
kit.weitnauer@alston.com<mailto:kit.weitnauer@alston.com>;  
rpedone@nixonpeabody.com<mailto:rpedone@nixonpeabody.com>; Munno, M. William; Guzman, Daniel  
Subject: RMBS Trustees - Lehman -- Draft letter to Judge Chapman  
Importance: High

Todd:

We are at a lunch break on Parekh's deposition.

Is this draft letter agreeable?

Please advise.

Thank you.

Bill Munno

---

M. William Munno  
Partner

Tel: (212) 574-1587

Email: munno@sewkis.com<mailto:munno@sewkis.com><mailto:%7bMessage%20Sender%7d>

SEWARD & KISSEL LLP

One Battery Park Plaza

New York, NY 10004

Fax: (212) 480-8421

Web: [www.sewkis.com](http://www.sewkis.com)<[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.sewkis.com&d=AwMFaQ&c=PMBNytmjBbkRgFcdMTUT4Q&r=NyihkIXI15PaZEZy6W\\_ByPH4pN49hW4QmhPbAJSQV-0&m=qLxPIr1mJaCwjs3BbntDndsAHHvlqpIQSsZQqrPmnGLY&s=veuAnLW9C-uJeJ9biPlitXgKtq9xi\\_PHWBG3z6mAARE&e=><https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.sewkis.com\\_&d=AAMFaQ&c=PMBNytmjBbkRgFcdMTUT4Q&r=NyihkIXI15PaZEZy6W\\_By](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.sewkis.com&d=AwMFaQ&c=PMBNytmjBbkRgFcdMTUT4Q&r=NyihkIXI15PaZEZy6W_ByPH4pN49hW4QmhPbAJSQV-0&m=qLxPIr1mJaCwjs3BbntDndsAHHvlqpIQSsZQqrPmnGLY&s=veuAnLW9C-uJeJ9biPlitXgKtq9xi_PHWBG3z6mAARE&e=><https://urldefense.proofpoint.com/v2/url?u=http-3A__www.sewkis.com_&d=AAMFaQ&c=PMBNytmjBbkRgFcdMTUT4Q&r=NyihkIXI15PaZEZy6W_By)

3A\_\_www.sewkis.com&d=AwMFaQ&c=PMBNytmjBbkRgFcdMTUT4Q&r=NyihkIXI15PaZEZy6W\_ByPH4pN49hW4QmhPbAJSQV-

0&m=qLxPIr1mJaCwjs3BbntDndsAHHvlqpIQSsZQqrPmnGLY&s=veuAnLW9C-

uJeJ9biPlitXgKtq9xi\_PHWBG3z6mAARE&e=><https://urldefense.proofpoint.com/v2/url?u=http-

3A\_\_www.sewkis.com\_&d=AAMFaQ&c=PMBNytmjBbkRgFcdMTUT4Q&r=NyihkIXI15PaZEZy6W\_By

Confidentiality Notice: This e-mail is intended only for the person or entity to which it is addressed and may contain information that is privileged, confidential or otherwise protected from disclosure. If you have received this e-mail in error, please notify Seward & Kissel LLP by return e-mail and destroy the original message and all copies thereof.

\*\*\*\*\*

IMPORTANT NOTICE: This email message is intended to be received only by persons entitled to receive the confidential information it may contain. Email messages to clients of Willkie Farr & Gallagher LLP presumptively contain information that is confidential and legally privileged; email messages to non-clients are normally confidential and may also be legally privileged. Please do not read, copy, forward or store this message unless you are an intended recipient of it. If you have received this message in error, please forward it back. Willkie Farr & Gallagher LLP is a limited liability partnership organized in the United States under the laws of the State of Delaware, which laws limit the personal liability of partners.

\*\*\*\*\*

<Change-Pro Redline - 2014.12.05 Joint letter to Judge Chapman re Decembe....pdf><2014.12.05 Joint letter to Judge Chapman re December 10 Hearing-v2.docx>

\*\*\*\*\*

IMPORTANT NOTICE: This email message is intended to be received only by persons entitled to receive the confidential information it may contain. Email messages to clients of Willkie Farr & Gallagher LLP presumptively contain information that is confidential and legally privileged; email messages to non-clients are normally confidential and may also be legally privileged. Please do not read, copy, forward or store this message unless you are an intended recipient of it. If you have received this message in error, please forward it back. Willkie Farr & Gallagher LLP is a limited liability partnership organized in the United States under the laws of the State of Delaware, which laws limit the personal liability of partners.

\*\*\*\*\*

\*\*\*\*\*

IMPORTANT NOTICE: This email message is intended to be received only by persons entitled to receive the confidential information it may contain. Email messages to clients of Willkie Farr & Gallagher LLP presumptively contain information that is confidential and legally privileged; email messages to non-clients are normally confidential and may also be legally privileged. Please do not read, copy, forward or store this message unless you are an intended recipient of it. If you have received this message in error, please forward it back. Willkie Farr & Gallagher LLP is a limited liability partnership organized in the United States under the laws of the State of Delaware, which laws limit the personal liability of partners.

\*\*\*\*\*